

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                     |                             |
|---------------------|-----------------------------|
| ANTHONY A. WHITE,   | )CASE NO.1:05CV2616         |
|                     | )                           |
| Petitioner,         | )                           |
|                     | )JUDGE CHRISTOPHER A. BOYKO |
| vs.                 | )                           |
|                     | ) <u>O R D E R</u>          |
| DAVID BOBBY, WARDEN | )                           |
|                     | )                           |
|                     | )                           |
| Respondent.         | )                           |
|                     | )                           |

**CHRISTOPHER A. BOYKO, J:**

The Court, having reviewed the Report and Recommendation (Doc.#15) of the Magistrate Judge regarding the Petition for Writ of Habeas Corpus (Doc.#1 ) and the Objections of the Petitioner, (Doc.# 19 ), and having conducted a *de novo* review of the issues raised, **ACCEPTS** and **ADOPTS** in full the Report and Recommendation (Doc.# 15 ) and Denies Petitioner's Petition.

On September 27, 2006, the Magistrate Judge filed his Report and Recommendation recommending that Petitioner's Petition be denied as untimely. Furthermore, the Magistrate Judge recommended that Petitioner failed to set forth sufficient grounds for equitable tolling of the relevant statute of limitations period and failed to present "reliable new evidence" of actual innocence.

On November 28, 2006, the Court adopted the Magistrate Judge's Report and Recommendation as unopposed. On December 22, 2006, Petitioner filed a Motion for Relief from Judgment alleging he had failed to respond to the Report and Recommendation because he never received the Magistrate Judge's Report and Recommendation. On

March 7, 2007, after the Court referred Petitioner's Motion for Relief from Judgment to the Magistrate Judge, the Magistrate Judge issued a Report and Recommendation that the Court withdraw the Order adopting the Report and Recommendation, accept Petitioner's Objections as timely filed and provide Respondent an opportunity to respond the Objections. The Court adopted the Magistrate Judge's Recommendation.

Having considered the Magistrate Judge's Report and Recommendation, Petitioner's Objections and Respondent's Response to Objections, the Court again ACCEPTS and ADOPTS in full the Magistrate Judge's Report and Recommendation of September 27, 2006 and Denies Petitioner's Petition for Writ of Habeas Corpus. Petitioner has not Objected to the Magistrate Judge's determination that his substantive claims are untimely. Furthermore, Petitioner has failed to provide sufficient reliable new evidence to support his actual innocence claim.

Furthermore, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

*S/Christopher A. Boyko*  
CHRISTOPHER A. BOYKO  
UNITED STATES DISTRICT JUDGE

Dated: March 5, 2009